

MINUTES OF BENTON COUNTY QUORUM COURT

August 23, 2007

A regular meeting of the Benton County Quorum Court was held on Thursday, August 23, 2007 at 5:00 p.m. at the Benton County Administration Building, 215 East Central Avenue, Bentonville, Arkansas, pursuant to proper call and notice.

County Judge Gary Black called the meeting to order.

County Clerk Mary Lou Slinkard called roll as follows:

12 JP's Present:	Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Moore, Schindler, Stephenson, Summers, Winscott, Wozniak
1 Absent:	Wolf

The presiding officer led the pledge of allegiance to the flag. Reverend Jean DeVall-Donaldson of Christ the King Lutheran Church led the prayer.

A moment of silence was held in support of the men and women serving in the United States Armed Forces.

MINUTES:

JP Stephenson made motion to approve the Minutes of the regular meeting of July 26, 2007 and the special meeting of August 16, 2007 as distributed, seconded by JP Hill. Motion to approve the minutes carried by unanimous voice vote.

COUNTY JUDGE'S REPORT:

County Judge Gary Black reported that between 25 and 30 citizens participated in the first free shredding day held in the Courthouse Tower, producing an entire pickup load of shredded material that was taken to the recycling center. He said that they are going to make the shredder available every other Saturday to see if the level of interest continues, and they will start asking civic groups to provide 3 to 5 people to staff the program. County Judge Gary Black stated that he has formed a committee to look into a program to reclaim and destroy pharmaceuticals in an environmentally friendly manner, because it is no longer recommended to flush them into the sewer system which allows them into the lakes and streams. He said the Department of Community Corrections Program is going well, and he has received 15 applications for the new

Coordinator position. He

added that they also have had over 200 participants in the Saturday work program, whereby persons sentenced to weekend jail time are working off that time in community service due to overcrowding in the jail. County Judge Gary Black reported that St. Mary's Hospital officials have agreed to extend to 90 days the length of time that the county has to consider the purchase of the hospital building.

County Judge Gary Black recognized Assistant County Administrator Travis Harp, who distributed a report illustrating the status of various Road Department projects and bridge inspections. He said he wanted the Court to be aware that the county's bridges are inspected regularly by the State Highway Department.

ELECTED OFFICIALS REPORT:

County Clerk Mary Lou Slinkard stated that the Equalization Board is currently meeting and has heard several hundred parcels. She said the County Clerk's office is installing new software which will enable full scale scanning of the documents associated with Minister's Credentials, Doing Business Under Assumed Name Certificates, Corporation Records, and County Court records. She said her office is processing returned mail resulting from the mailing out of 27,000 Voter Registration Confirmation Notices which is required by state law, and noted that the process is more complicated this year due to an error by the mailing company which led to several thousand of Garland County's cards being returned to her office. County Clerk Mary Lou Slinkard stated that there has been discussion in the media regarding the confusion in the new marriage law, because a clerical error in the last legislative session did away with the minimum age to marry in the state of Arkansas. She said she has been in contact with the Governor's Office, and for now they have been instructed to work with the county's administrative Circuit Judge to determine if a license may be issued.

COMMITTEE REPORTS:

JP Moore reported that the Long Range Planning/Properties & Equipment Committee met on August 21, 2007, and discussed the St. Mary's hospital proposal, and the possibility of moving the County Road Department, which will they will address later in the meeting.

JP Wozniak stated he has asked that Planning Director Ashley Pope be added to the agenda to discuss the Flood Damage Prevention Code that was forwarded from the Environmental Committee.

PUBLIC COMMENTS:

Don Day said that the new regulations proposed by FEMA are probably not even legal in the state of Arkansas, and also raise the possibility that the Northwest Arkansas Conservation Authority will not be able to build a sewer treatment facility due to restrictions in the floodplain zone. He said they are threatening the county with suspension from the program if they do not meet the September 28, 2007 deadline as a way to get the county to do its bidding. He said the proposed nuisance ordinance started out as an attempt to remedy real hazards to public health and safety, but has become a nuisance because of neighbors complaining about the appearance of

property.

Nancy Miller stated that she feels the nuisance ordinance is important to the people of Benton County, and stated that she needs to sell her house, but it will be difficult because the property next door has been trashed up. She urged the JPs to pass the ordinance because Benton County is beautiful and they need to help keep it that way.

Sue Elverston thanked the JPs who attended the Planning Workshop, and stated that she is against the proposed nuisance ordinance as it is written because it could be used for beautification purposes, and should only address health and safety issues. She also said she is concerned about people losing their homes if they cannot afford to clean them up.

Sue McDonald stated she does not care if there are cars in her neighbor's yard, but she is concerned about the oil that could end up in Beaver Lake. She said she does not understand why the cities can pass laws to get things cleaned up, but the county cannot.

Mike Payne stated that he is against the ordinance because it seems there is a class warfare going on between people who have nice homes and those who do not. He stated he is concerned about the lack of definitions regarding vegetation, junked cars, and the amount of time allowed for appeals.

Doug Timmons, stated that as Vice President of the Association of Beaver Lake Environment, he has been asked by the Board of Directors to speak in support of the proposed nuisance ordinance, and stated that it is long overdue and a necessary response to the pressures of urbanization in the county. He said that residents of the county should have protection from those who do not care how their actions could harm other people. He said he believes that those enforcing the ordinance will use professionalism and common sense, and that the appeals process will work.

Jim Sigman stated that the 10 Commandments have been turned into over 1500 rules and regulations, and if the Quorum Court passes another regulation against the people of Benton County, they are putting a nail in the coffin of personal property rights. He said everyone should have enough respect for their neighbors to clean up a nasty yard, and everyone who sold big homes and moved here from other states should realize where they have moved to, and some people whose families have been here for several generations liked it better before so many visitors came to stay.

James Gately stated that the Quorum Court has the responsibility to protect the health and welfare of the citizens of Benton County, and county residents have no less right to that protection than city residents. He noted that this ordinance has taken 26 months, and it only took 13 months to write the Constitution and moving into the county does not give anyone extra rights to harm the health and welfare of other residents.

Homer Hon stated that he could care less what his neighbor does with his yard, and lives out in the county because he does not want anyone telling him what to do. He said he fought for this country and its freedoms, and he is tired of having them taken away. He said he is against the ordinance, and against anymore taxes.

Margo Hill stated that she has 90 signatures from people in her neighborhood that support the nuisance ordinance but could not attend the meeting. She said most of the problems in their area are health and safety issues, and they do not want the ordinance for beautification purposes. She noted that there have been many septic leaks through the years and their offers of help to the property owners have been refused. She said that the county has grown and progressed enough

that this ordinance is long overdue.

Theresa Pockrus stated that the county is more concerned with yard patrol than health and safety, and should be making more efforts to help county residents get water and sewer service.

William Wilson stated that the vehicles in his yard do not leak and are not a hazard to anyone, because he is on well water and he would not do anything to pollute his own water. He said that as a veteran who has served his country, he should not be told what he can and cannot have in his yard because his neighbors want to sell their home. He said he has cleaned up all that he can, and they should consider the elderly who could have their homes taken away and boarded up if they are not able to comply with this ordinance.

Tanya Lewis shared assessment records which she said indicate that property values have not decreased in her neighborhood. She stated that she has pages upon pages of signatures of people who are opposed to the nuisance ordinance.

Patty Hyde stated that she is opposed to the nuisance ordinance because it is written too vaguely, and in 10 to 20 years no one knows how it will be perceived.

Cindy Sigman stated that she believes the nuisance ordinance will cause clashes between neighbors, and those people who want to impose their regulations on how she uses her property should feel free to start paying her taxes.

OLD BUSINESS:

- (A) Second Reading of Proposed Ordinance for the Declaration and Abatement of Public Nuisances; Sponsor: Environmental Committee

County Clerk Mary Lou Slinkard read the proposed ordinance by title only. JP Wozniak stated that this ordinance has been in development for 26 months, there has been much discussion, and this is what the Environmental Committee has forwarded to the Quorum Court. JP Hubbard stated that the Planning Board was specific in their desire to stick to health and safety issues, and this ordinance does not do that. JP Moore stated that there was a joint meeting between the Environmental Committee and the Planning Board, and this is the ordinance that they agreed upon. JP Hubbard stated that some definitions were added after that meeting. JP Hobbs stated that her daughter questioned the definition of an attractive nuisance, and she is concerned that a trampoline or swimming pool could be called an attractive nuisance. She said wanted the ordinance to be limited to health and safety issues, in order to get it passed, and questioned the definition of junked vehicles. JP Stephenson stated that the ordinance is similar to those in effect in many cities in the county, and there is nothing in it that is not considered a health or safety issue. He noted that we live in a society with regulations. JP Glass stated that he has heard from constituents on both sides of the issue, but that something has to be in effect that allows evaluation of what is and is not a threat to public health and safety. He said that if there is no threat to public health, safety, or welfare, then this ordinance does cover it, and there is an effective appeals mechanism in place. He noted that it has been carefully crafted; the County Attorney has reviewed it, and those in charge of enforcing it will hopefully be fair in doing so. JP Winscott stated there was probably concern over who would receive tickets when speed limits in school zones were first adopted, and credence to proper interpretation should be given. He said it has been labored over by many people, and there has been participation by members of the

public, which is how a good ordinance should be written. He said people who have a large investment in their property should have that investment protected.

County Judge Gary Black stated that the proposed ordinance will be placed on the September 27, 2007 Quorum Court agenda for its third and final reading.

NEW BUSINESS:

- (A) Proposed Resolution Expressing the Appreciation of Benton County, Arkansas to Daniel Oxford; Sponsor: JP David Hill

County Clerk Mary Lou Slinkard read the proposed Resolution in full. JP Winscott made motion to adopt, seconded by JP Hill. JP Wozniak stated that Daniel Oxford took over the Coroner's Office during a difficult time and helped restore leadership and trust in the office. JP Stephenson and JP Glass encouraged Daniel Oxford to consider running for the office in the next election. JP Winscott stated he wished to echo the previous statements. JP Harrison stated that he had a personal experience with the Coroner's Office during Daniel Oxford's tenure, and he was well taken care of. JP Schindler spoke regarding the difficulty of the job, and stated that Daniel Oxford had his vote if he ran for the office.

There being no further discussion, by unanimous voice vote the Resolution was duly adopted and assigned No. **R-2007-19**.

- (B) Proposed Resolution Authorizing the County Judge to Apply for a Grant on Behalf of the Pine Top Community; Sponsor: JP Frank Winscott

County Clerk Mary Lou Slinkard read the proposed Resolution in full. JP Winscott made motion to adopt, seconded by JP Stephenson. JP Winscott stated that the grant will pay for a 2-bay expansion for the Piney Point Volunteer Fire Department and will require no county funds.

There being no further discussion, by unanimous show of hands vote the Resolution was duly adopted and assigned No. **R-2007-20**.

- (C) Proposed Appropriation Ordinance Amending Appropriation Ordinance No.O-2006-24 (2007 Benton County Budget) Authorizing a Transfer of Funds Between Categories and Line Items; Appropriating Additional Monies and Authorizing Additional Expenditures in Various Funds and Departments; and Amending *Schedule 1—Revenues by Fund* in the 2007 Benton County Budget by Decreasing the Amount of Transfer to the County Road Fund; Sponsor: JP Tim Summers

County Clerk Mary Lou Slinkard read the proposed appropriation ordinance by title only. JP Summers made motion to adopt, seconded by JP Stephenson. JP Summers stated that this has been through the Finance Committee and Committee of 13, and they have had a couple of weeks to review the numbers.

There being no further discussion, a roll call vote was recorded as follows:

12 yeas: Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Moore, Schindler,
Stephenson, Summers, Winscott, Wozniak
1 absent: Wolf

Appropriation Ordinance duly adopted and assigned No. **O-2007-18**.

- (D) Proposed Appropriation Ordinance Amending Appropriation Ordinance No. O-2006-24 (2007 Benton County Budget) Appropriating Additional Monies and Authorizing Additional Expenditures in Department 01, County Judge, Fund 010; Sponsor: JP Tim Summers

County Clerk Mary Lou Slinkard read the proposed appropriation ordinance by title only. JP Summers made motion to adopt, seconded by JP Moore. JP Summer stated that this was discussed thoroughly at the Committee of 13 meeting, and the appropriation is for earnest money to give the county 90 days to consider whether or not to purchase the St. Mary's Hospital building.

There being no further discussion, a roll call vote was recorded as follows:

11 yeas: Brown, Glass, Harrison, Hill, Hobbs, Moore, Schindler,
Stephenson, Summers, Winscott, Wozniak
1 nay: Hubbard
1 absent: Wolf

Appropriation Ordinance duly adopted and assigned No. **O-2007-19**.

- (E) Proposed Resolution Authorizing the County Judge to Proceed With the Necessary Steps to Prepare the County's Road Department and Public Services Building Property for Sale; Sponsor: JP Tim Summers

County Clerk Mary Lou Slinkard read the proposed Resolution in full. JP Moore motion to adopt, seconded by JP Hill. JP Moore stated that this is one of two items they will deal with tonight that have to do with possibly relocating the County Road Department; it was discussed at the Long Range Planning/Properties & Equipment Committee, and will allow the County Judge to take the necessary steps to be able to sell the Highway 102 County Road Department location if they decide to relocate the department. JP Summers stated that they had a lengthy discussion regarding the proposal, and they are considering it only if they are able to sell the current location for enough money to purchase the new property and build the facility without any additional county funds. He said they cannot even talk about the possibility of selling the property until they obtain a current survey and appraisal, and are not doing an appropriation

ordinance yet because the exact costs are not available, but the Long Range Planning/Properties & Equipment Committee wanted the County Judge to be able to get started on the process. JP Stephenson stated that it seems there are several items that are coming to them that are “emergencies”, and we still do not have a black and white plan as to what our needs are. JP Wozniak stated that he is not in favor of selling a prime piece of real estate which would be an excellent location for a JDC if the hospital does not work out, or a justice complex, or a jail expansion, although he does not object to relocating the Road Department facility. JP Hubbard stated that he agrees with JP Stephenson on matters suddenly becoming “timely”. He said he has not received minutes from the Long Range Planning/Properties & Equipment meeting yet, so he has not received any information on this issue prior to the meeting. He said they are getting ahead of themselves and do not have a plan. He also stated that they have a nearly \$20 million investment in the County Jail and he will not support selling the property right next to it. He said they are getting way out of hand in jumping into real estate contracts and he will vote “no”. JP Winscott stated that they will need a survey anyway, even if they county decides on another use for the property, but he will not vote to sell or build anything until they have a 10-year plan. JP Schindler stated that the County Road Department must relocate, because they cannot get the equipment in and out of the facility due to the traffic on Highway 102, which also makes the property a poor choice for a judicial center. JP Summers stated that there is a lot of good discussion, but they cannot make a decision until they obtain the information being requested by this resolution. He reminded the court that 12 years ago the voters were given an option to build a new judicial center on Highway 102, at a cost of \$38 million dollars, and that certainly would be adding to the traffic problems there now. He said that this is just a simple first step. JP Hubbard stated that once again more information should have been provided to the JPs, and it is a simple matter to obtain cost estimates for a survey and appraisal, and if they had them then they would not be looking at an open-ended resolution. JP Brown stated that they cannot make an informed decision on what to do with the Road Department property until they know how much it is worth, and that information will be a factor in any decision they make. JP Harrison stated that it is obvious that we are running out of space in all of the county offices, and there are plans that have been discussed many times. He said they cannot begin to solve the problem without looking at all possible solutions. JP Hubbard stated that he has heard that we need space, but he has not heard how much space we need, or what we are going to need in 5 years or 10 years. JP Glass stated that they are simply assessing what we have, and whether there are any environmental issues on the property.

There being no further discussion, a roll call vote was recorded as follows:

10 yeas: Brown, Glass, Harrison, Hill, Moore, Schindler,
Stephenson, Summers, Winscott, Wozniak
2 nays: Hobbs, Hubbard
1 absent: Wolf

Resolution duly adopted and assigned **No. R-2007-21**.

- (F) Proposed Appropriation Ordinance Amending Appropriation Ordinance No. O-2006-24 (**2007** Benton County Budget) Appropriating Additional Monies and Authorizing Additional Expenditures in Department 01, County Judge, Fund 010; Sponsor: JP Tim Summers

County Clerk Mary Lou Slinkard read the proposed appropriation ordinance by title only. JP Moore made motion to adopt, seconded by JP Hill. JP Moore explained that this is earnest money to hold a piece of property that the county is considering purchasing to relocate the County Road Department, and it is refundable.

There being no discussion, a roll call vote was recorded as follows:

9 yeas: Brown, Glass, Harrison, Hill, Moore, Schindler,
Stephenson, Summers, Wozniak
3 nays: Hobbs, Hubbard, Winscott
1 absent: Wolf

Appropriation Ordinance duly adopted and assigned **No. O-2007-20**.

OTHER BUSINESS:

JP Wozniak recognized Planning Director Ashley Pope, who explained that due to Arkansas Code requirements regarding adoption of a code by reference, they cannot adopt the new floodplain ordinance at the September 27 Quorum Court meeting as they had planned. She said that the law requires a 30-day public comment period following publication of the ordinance, which must occur prior to its final reading, so it would have needed to be on its second reading at tonight's meeting in order to meet that requirement. She said that she has been working with Northwest Arkansas Regional Planning Director Jeff Hawkins, and they have developed an ordinance which will simply amend Chapter 38 of *The Benton County Code of Ordinances*, and keep all of the regulations which are currently in place.

Jeff Hawkins was recognized and stated that the model ordinance distributed by the State of Arkansas has caused a lot of confusion, and was intended to provide some uniformity across the state, but that does not mean that Benton County's current code is very far out of compliance. He responded to an earlier comment that adopting the floodplain ordinance is not an emergency, stating that while balancing community interests with individual property rights is certainly important, failure to adopt a floodplain ordinance by September 28 will result in suspension from the Federal Flood Insurance Program, flood insurance will be prohibitively expensive, current policies will not be renewed, and may also involve other sanctions. He said there would be no grants for buildings or federal disaster assistance for the repair of insurable buildings in flood prone areas, and no mortgage insurance or loan guarantees in flood hazard areas for VA or FHA loan applicants.

Jeff Hawkins said that 15 sections of the Code of Ordinances were amended in 2003, and it is still a good ordinance which will meet Federal standards, although it needs some minor changes, including the date of the flood study that is cited in the ordinance. He said the county's staff has

done a good job administering the ordinance, and participation in flood insurance has increased to \$120 million in coverage in Benton County. He said that the ordinance that he and Ashley Pope will present to the Quorum Court will contain the minimum changes required to stay in compliance with Federal regulations. He said that Benton County has been in the program for 16 years, and they can continue with some very minor changes to the current code.

JP Hubbard asked for an example of the changes that are needed, other than the date of the study and maps. Jeff Hawkins stated that the state agency that Benton County is required to coordinate with has changed its name to the Arkansas Department of Natural Resources, and there are some other minor things of that nature. JP Hubbard asked about the exemption for farming operations. Jeff Hawkins stated that the language regarding exemptions for normal farming operations that is in the code is standard in many floodplain ordinances throughout the country, and has not been questioned since the original ordinance was adopted in 1991. JP Moore stated that FEMA had told Ashley Pope that the current exemption language was unacceptable. Jeff Hawkins stated that the language has been in ordinances since the 1970's, and no regulations have changed since then that would affect it. He said that is what federal officials told Ashley Pope when she called them, but if pressed on it they would probably back down. JP Glass stated that he did question them, and they did back off on their objections. He added that anything that would require the moving of earth would be a non-traditional operation, and would not qualify for the exemption. Ashley Pope stated that she would provide the JPs with a copy of the new ordinance amending the Code of Ordinances for the next Environmental Committee meeting.

ANNOUNCEMENTS:

JP Summers announced that the Finance Committee will meet Tuesday, September 4, 2007 at 2:30 p.m., and the Committee of Thirteen will meet Tuesday, September 11, 2007 at 6:00 p.m.

JP Wozniak announced that the Environmental Committee will meet Tuesday, September 4, 2007 at 5:00 p.m.

There being no further business to come before the court, upon motion and second the meeting was adjourned at 7:15 p.m.

Respectfully submitted,

Mary L. Slinkard,
County Clerk

Prepared by: Betsy Deaton